

Sub #17  
hybridization assay probe of step a) and a nucleic acid  
comprising a *Mycobacterium tuberculosis* nucleotide base sequence.

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REMARKS

Claim 84 has been amended. New claim 101 is added to the application. Claims 24-52, 48-51, and 54-101 are pending in the above captioned application.

The Examiner ignored claim 100 in the restriction requirement and did not assign it to either Group I or II. Applicant submits that claim 100 and new claim 101 belong to Group II because they are directed to oligonucleotides targeted to *M. tuberculosis*.

Applicant also submits that claims 55 and 56 should be included in Group II because they are dependent on claim 42 of Group II.

Applicant hereby elects the claims of Group II with traverse. Within Group II, Applicant elects SEQ ID NO. 3 for examination.

1. Lack of proof that there will be a serious burden on the examiner if restriction is not required

According to MPEP § 803, examiners must provide reasons and/or examples to support conclusions on restriction requirements. MPEP § 803 also sets forth two criteria for a proper requirement for restriction between patentably distinct inventions:

- (1) The inventions must be independent or distinct as claimed; and
- (2) There must be a serious burden on the examiner if restriction is not required.

In this case, there is no serious burden on the examiner if restriction is not required. In fact, the Examiner has already conducted a search and examination of claims 24-42, 48-51 and 54-56 in an Office Action mailed July 10, 1997. The search and examination conducted in that Office Action have already covered claims in both Group I (e.g., claims 24-42, 48-51 and 54-56) and Group II (e.g., claims 39-42). Since claims 57-100 have been categorized into the same group with claims 39-42, Applicant submits that the Examiner need not conduct further burdensome search.

CONCLUSION

For the reasons detailed above, Applicant urges reconsideration and withdrawal of the restriction requirement made in the communication of March 18, 1997.

If the fee submitted in connection with this response is incorrect, please charge or credit Deposit Account No. 12-2475 for the appropriate amount.

Respectfully submitted,

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